

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HUAWEI TECHNOLOGIES CO. LTD, §
§
v. § Case No. 2:16-CV-00052-JRG-RSP
§
T-MOBILE US, INC., T-MOBILE U.S.A., §
INC. §

ORDER

Huawei Technologies Co. LTD (“Huawei”) moves to strike portions of Dr. Srinivasan Seshan’s rebuttal report that Huawei contends are based on theories that were not disclosed in response to Huawei’s relevant interrogatories. Dkt. 255. The Court heard argument on August 22, 2017, and explained the reasons the Court was inclined to deny the motion.

The theories Huawei object to are noninfringement contentions, as opposed to underlying facts that discovery is designed to develop. The district’s local patent rules do not require noninfringement contentions, and a party is not entitled to early disclosure of expert opinions through interrogatory. *See, e.g., Promethean Insulation Tech. LLC v. Sealed Air Corp.*, No. 2:13-cv-1113-JRG-RSP, 2015 WL 11027038, at *2 (E.D. Tex. Oct. 13, 2015).

In addition, because T-Mobile objected to Huawei’s interrogatories on the basis that they sought early disclosure of expert opinions, Huawei had sufficient notice to test that objection by moving to compel a complete response, and having failed to do so, Huawei is not entitled to the severe relief it now seeks. *See Pan-Islamic Trade Corp. v. Exxon Corp.*, 632 F.2d 539, 552 (5th Cir. 1980), abrogated on other grounds by *Assoc. Gen. Contrs. Of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 536 n. 33 (1983).

Accordingly,

It is **ORDERED**:

Huawei's motion to strike, Dkt. 255, is **DENIED**.

SIGNED this 25th day of August, 2017.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE